

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RCC VENTURES, LLC,

**Civil Action No.: 17-CV-01585-GHW**

Plaintiff,

-against-

BRANDTONE HOLDINGS LIMITED,

Defendant.

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**DECLARATION OF CHRIS HAN**  
**IN SUPPORT OF DEFAULT**  
**JUDGMENT**

I, Chris Han, hereby affirm and declare under penalty of perjury that the following is true and correct.

1. I am a member of the Bar of this Court and am an associate of the firm of Garson, Segal, Steinmetz, Fladgate LLP, attorneys for plaintiff, RCC Ventures, LLC (“RCC” or “Plaintiff”) in the above-captioned action and I am familiar with all the facts and circumstances in this action.

2. I make this declaration in support of Plaintiff’s application for a Default Judgment pursuant to your Honor’s Individual Rules of Practice.

**THE BASIS FOR ENTERING A DEFAULT JUDGMENT**

3. This action was commenced against Brandtone Holdings Limited (“Defendant”) by Summons and Complaint on March 2, 2017. (Dkt. 1). On March 6, 2017, Plaintiff filed its first Amended Complaint electronically. (Dkts 7-8). A copy of the Summons and Amended Complaint was served on Defendant on March 23, 2017 by personal service made on Nancy Dougherty, the authorized agent in the Office of the Secretary of State of the State of New York. (Dkt. 10.) *See* “Docket Text” section.

4. Defendant's answer was due on April 13, 2017. (Dkt. 10). *See* "Docket Text" section.

5. The time for Defendant to answer or otherwise move with respect to the Amended Complaint has expired.

6. Defendant has not answered or moved with respect to the Amended Complaint, and the time for Defendant to do so has not been extended.

7. Plaintiff requested a Certificate of Default on June 27, 2017, (Dkt. 16).

8. The Clerk of the Court noted Defendant's default on July 6, 2017 and issued a Certificate of Default against Defendant. (Dkt. 17).

9. Defendant is a corporate entity and, as such, is not a minor or mentally incompetent. Similarly, Defendant is not presently in the military service of the United States.

### **PROPOSED DAMAGES**

10. As described in further detail in the Complaint, in accordance with the express terms of the Contract, Plaintiff is entitled to (1) a cash-finder's fee of \$269,688.00<sup>1</sup>; (2) a warrant coverage of \$404,532.00<sup>2</sup>; (3) unpaid accepted deposit fee of \$18,032.00; (4) attorneys' fees, administrative fees and costs incurred in pursuing this action. In the alternative, Plaintiff seeks \$280,000.00 in liquidated damages, as well as attorneys' fees, administrative fees and costs incurred in pursuing this action. (Dkt. 1, ¶¶50-53).

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<sup>1</sup> Based on the Contract, the cash finder's fee is equal to "two (2.00%) percent . . . of the aggregated loan made by such third party or affiliate thereof as part of such debt transaction." (Dkt. 1, Ex. A, p.5 ("Non-Circumvention")). Defendant received a total aggregated loan from Ares Capital Corporations Venture Debt Group and Ares Capital Management LLC ("Ares"), a third party to whom RCC introduced Defendant, in the amount of 12,000,000.00 (in Euro)("Aggregated Loan"). (Dkt. 1, ¶33). 2 percent of that amount equals to 240,000 (Euro), which amounts to \$269,688 based on the currency exchange rate of 1.1237 on June 15, 2015, the date Defendant breached the Contract.

<sup>2</sup> The Non-Circumvention clause of the contract allows Plaintiff to recover "(3.00%) percent of the aggregate loan made." (Dkt. 1, Ex. 1, p.5 ("Non-Circumvention")). Accordingly, three percent of the 120,000,000 (in Euro) equals to 360,000 (in Euro). This amount thus equal to \$404,532.00 based on the currency exchange rate of 1.1237 on June 15, 2015, the date Defendant breached the Contract.

11. On October 17, 2014, RCC and Defendant entered into an exclusive debt financing agreement (“Contract”). (Dkt 1, Ex. A). The Contract was signed by both parties. Padraig McBride, the Chief Financial Officer of Brandtone signed on Brandtone’s behalf. (Dkt. 1, ¶ 16).

### **Cash Finder’s Fee**

12. The “Non-Circumvention” of the Contract states that RCC is entitled to a finder’s fee in the amount of two percent of the Aggregated Loan received “[i]n the event RCC has introduced the [Defendant] to a third party and Borrower then enters into a debt transaction with that third party, or any affiliate of that third party, within 60 months following this [Contract][.]” (Dkt. 1, Ex. A, p.5).

13. RCC introduced Ares Capital Corporations Venture Debt Group and Ares Capital Management LLC (“Ares”) to Defendant as a possible debt-financing partner. (Dkt. 1, ¶ 25).

14. Prior to the introduction, Defendant did not know about Ares. (Dkt. 1, ¶ 34).

15. Through the exercise of due diligence, on or about June 9, 2015, RCC became aware that Ares provided financing to Brandtone in the amount of 12,000,000 (Euro). (Dkt. 1, ¶ 33).

16. Based on the calculation of the Non-Circumvention Clause, RCC is entitled to 240,000 (Euro), which amounts to \$269,688 based on the currency exchange rate of 1.1237 on June 15, 2015, the date Defendant breached the Contract. A true and accurate copy of the exchange rate from Euro to Dollar on June 15, 2015 is annexed hereto as **Exhibit A**.

17. Further, Ares falls within the definition of “third party” contemplated by the Contract. (Dkt. 1, ¶ 34).

18. Defendant's circumvention occurred on or prior to June 9, 2015, which was well within the 60 months Non-Circumvention period contemplated by the Contract.

19. Accordingly, RCC is entitled to \$269,688.00 in finder's fee under the Contract.

#### **Warrant Coverage**

20. In addition to the finder's fee, the Non-Circumvention Clause also allows RCC to recover "a warrant coverage equal to three (3.00%) percent of the aggregated loan made by such third party or affiliate thereof as part of such debt transaction." (Dkt. 1, Ex. A, p.5).

21. Three percent of the Aggregated Loan, 12,000,000 (Euro), equals to 360,000 (Euro). Based on the currency exchange rate of 1.1237 on June 15, 2015, the date Defendant breached the Contract, the warrant coverage was valued at \$404,532.00.

22. Accordingly, RCC is also entitled to the warrant coverage valued at \$404,532.00.

#### **Acceptance Deposit**

23. The Contract included a provision stating that should Defendant elect to accept the Contract, \$54,000.00 would be due and payable to RCC in two installments, \$36,000.00 upon acceptance of the proposal and the retainer balance of \$18,000.00 due upon issuance of a lenders term sheet ( the two installments are collectively referred to as "Acceptance Deposit"). (Dkt. 1, ¶ 17, Ex. A, p.5).

24. On October 27, 2014, Defendant partially honored its obligation to pay the first installment of the Acceptance Deposit, which amounted to \$35,968.00. (Dkt. 1, ¶ 18).

25. Defendant, however, did not remit payment for the remaining Acceptance Deposit of \$18,032.00. (Dkt. 1, ¶ 36).

### Attorneys' Fees

26. The proposed damages, attorneys' fees and costs and expenses requested in this Motion for Default Judgment are well-documented.

27. The Contract further provides that Defendant will be responsible for administrative expenses as well as all costs and expenses incurred by RCC and Lender. (Dkt. 1, ¶ 52).

28. Specifically, the Contract state: "[b]orrower agrees to pay the counsel fees of the RCC and Lender as well as any disbursements and court costs incurred by RCC and Lender in connection with the enforcement of the Company's rights under this Agreement." (Dkt. 1, ¶ 52, Ex. A, p.5).

29. Counsel for RCC has spent 25.3 hours on this matter and associates bill on this matter at any hourly rate of \$250 per hour from January 30, 2017 to July 14, 2017. An itemized and contemporaneously prepared list of counsel's hours is attached hereto as **Exhibit B**.

30. The itemized bill shows the work of three associates<sup>3</sup> who have worked on this matter at various stages. All associate work has been performed under the supervision of Robert Garson, the managing partner of the firm.

31. The hours include counsel's calls with RCC and preparation of the Complaint, documents related to Defendant's default, and other related documents. Accordingly, RCC is entitled to attorneys' fees of \$ 6,325.00.

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<sup>3</sup> Exhibit A shows entries from Chris Han, Esq., Michael Smaila, Esq., and Jessica Mass, Esq. Chris Han graduated from Boston University School of Law in 2014, was admitted in 2015, and joined the firm in 2017. Michael Smaila joined the firm in 2014, graduated from Fordham University School of Law in Spring 2014, and was admitted in 2015. Jessica Mass graduated from Benjamin N. Cardozo School of Law in Spring 2014, was admitted in 2015, and joined the firm in early 2016.

### **Costs and Expenses**

32. Costs incurred thus far in bringing this action amount to \$488.00, including the \$400.00 filing fee and \$88.00 for service of process. A true and correct invoice from Legal Process Service is attached hereto as **Exhibit C**.

### **Liquidated Damages**

33. In acknowledge of RCC's devotion of time, effort and resources on behalf of Brandtone as well as in contemplation of the difficulty in ascertaining damages in the time of contracting in the event of Defendant's breach, the Contract provides an "Exclusivity and Breakup Fee." (Dkt. 1, ¶ 49, Ex. A, pp.6-7).

34. Specifically, the Contract states that in the event Defendant "does not complete this proposed transaction" or "decides not to proceed for any reason," "[b]orrower shall be obligated to pay and RCC shall be deemed to have earned a break-up fee in the amount of \$280,000.00 which break-up fee constitutes a reasonable estimate of RCC's damages and which break-up fee shall constitute liquidated damages." (Id.).

35. Upon Defendant obtaining financing in the amount of 12,000,000 (Euro) from Ares by circumvention, Defendant decided not to proceed with any other prospective lenders that RCC had spent time sourcing for Defendant.

36. Brandtone's decision not to proceed constituted a default under the Exclusivity and Breakup Fee provision. (Dkt. 1, Ex. A, p.6).

### **Choice of Law**

37. The Contract "shall be governed by and construed in accordance with the laws of the state of New York applicable to contracts made and performed in the state." (Dkt. 1, Ex. A, p.6 ("Jurisdiction")).

WHEREFORE, Plaintiff, RCC Ventures, LLC, respectfully requests that this Court enter default judgment against Defendant, Brandtone Holdings Limited:

- i. For an award of cash-finder's fee of \$269,688.00
- ii. For an award of warrant coverage valued at \$404,532.00
- iii. For an award of unpaid Acceptance Deposit of \$18,032.00;
- iv. For attorneys' fees in the amount of \$ 6,325.00;
- v. For administrative fees and costs in the amount of \$488.00;

WHEREFORE, In the alternative, Plaintiff, RCC Ventures, LLC. Respectfully requests that this Court enter default judgment against Defendant, Brandtone Holdings Limited and award liquidated damages in the amount of \$280,000.00.

Dated: July 14, 2017  
New York, New York

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/s/  
Chris Han, Esq.



## Historical Rates for the EUR/USD currency conversion on 15 June 2015 (15/06/2015).

On the 15th June 2015 the spot inter-bank market saw:

Open: 1 EUR = 1.1211 USD

Close: 1 EUR = 1.1284 USD

Average: 1 EUR = 1.1237 USD

Lowest: 1 EUR = 1.1223 USD

Highest: 1 EUR = 1.125 USD

### Today's Live Euro into US Dollar Exchange Rate

Spot: 1 EUR = 1.1404 USD

Independent Provider: 1 EUR = 1.1324 USD

Avg. UK Bank International Payment: 1 EUR = 1.0957 USD

[Find out More About Variable Rates >>](#)

July 2017							
SU	MO	TU	WE	TH	FR	SA	
	2	3	4	5	6	7	1
9	10	11	12	13	14	15	8
16	17	18	19	20	21	22	15
23	24	25	26	27	28	29	22
30	31						29



1/30/2017	RCC Ventures, LLC	Brandtone [F]	Jessica Mass	Get assignment from RG. Read file (contract, emails, etc.). Read past RCC Complaint for information useful for this Complaint. Conduct business entity lookup for Brandtone in NY. Look up RCC and Brandtone websites. Draft Complaint.	5.00
1/31/2017	RCC Ventures, LLC	Brandtone [F]	Jessica Mass	Meet with RG. Edit Complaint.	1.00
3/1/2017	RCC Ventures, LLC	Brandtone [F]	Jessica Mass	Proofread and edit Complaint. Draft Summons, Proof of Service and Rule 7.1 Statement. Prepare exhibits.	1.00
3/2/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/2/2017 4:47:52 PM: Complaint Filing in SDNY	0.40
3/2/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/2/2017 4:22:48 PM: Phone call to ECF Clerk re complaint filing typo	0.30
3/7/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/7/2017 5:42:50 PM: Phone call/email w/ Brad re contracts.	0.10
3/8/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(RCC v. Lattice) Call Judge Wood's chambers to confirm whether the Amended Complaint will moot the hearing on the Order to Show Cause of showing complete diversity between parties.	0.20
3/17/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/16/2017 5:28:15 PM: Call to civil court re filing of service affs and hearing date (have to call back tomorrow to speak to proper clerk)	0.10
3/17/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/16/2017 1:49:26 PM: Brandtone service setup (local + Hague)	0.90
	RCC Ventures,		Michael	(RCC) 3/20/2017 10:40:34 AM: Emails w/ Dovi re service on Brandtone -US Address.	

3/20/2017	LLC	Brandtone [F]	Smaila		0.20
3/23/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 3/22/2017 12:26:02 PM: Emails w/ Dovid re service in Brandtone matter (service switch to sec of state given information from landlord)	0.20
4/3/2017	RCC Ventures, LLC	Brandtone [F]	Michael Smaila	(RCC) 4/3/2017 12:30:41 PM: Brandtone notice of appearance drafting and filing.	0.50
6/27/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Draft Request for Default Certificate papers; prepare paper copy of Clerk's Certificate for filing; filing on ECF.	1.40
6/28/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Serve Order to Defendant; contact co-counsel at Ireland for service of Order in connection with request for default judgment.	0.40
6/29/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Send Affirmation of Service form to Bill H.	0.10
7/13/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Analyze relevant liquidated damages case law to support the basis of damages claim.	1.10
7/14/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Draft Motion for Default Judgment pursuant to Judge's Rule; Order to Show Cause, Declarations, Memorandum of Law in Support of Damages.	3.20
7/14/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Edit Memo of Law; shepardize case cited therein; edit OTSC and Declaration.	2.90
7/14/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) Edit memorandum of law for damages; assemble exhibits for filing, prepare courtesy copies pursuant to Judge's rule.	3.50
7/14/2017	RCC Ventures, LLC	Brandtone [F]	Chris Han	(Brandtone) File Order to Show Cause for Default Judgment at SDNY.	3.00



# Legal Process Service

Professional Service Since 1982

724 S. Eighth Street, Las Vegas, Nevada 89101-7005

Telephone (702) 471-7255 Fax (702) 471-7248

Tax ID - 88-0293775 State Lic. #604

www.LPSNV.com contact@LPSNV.com



Legal Process Service



Invoice # 1701708

Invoice Date: 03/17/2017

Garson, Segal, Steinmetz, Fladgate LLP

Kevin Kehrli

Attention: Kevin Kehrli

164 West 25th St., #11R

New York, NY 10001

Insured:

Attention: **KEVIN KEHRLI**

**\*\*Service was accepted by Registered Agent at 1645 Village Center Cir. Ste. 170, Las Vegas, NV 89134. Thank you, Len 3/17\*\***

**THANK YOU FOR CHOOSING LPS!**

Hi Kevin, here is the link for payment. Thank you!

Plaintiff(s)	LG Capital Funding, LLC	Court: United States District
	vs	County: Eastern District of
Defendant(s)	Eventure Interactive, Inc.	Case No.: 1:17-cv-01353-DLI-
Re:	Eventure Interactive, Inc.	Dept. No.:
Documents Served or Service Provided	Summons in a Civil Action; Complaint	Your File
		Hearing Date
		Date Served: 03/17/2017
		Time Served: 9:42 am

Date	Service Description	Service Fee	Date Paid	Check# / Auth #	Fee Paid
03/16/17	Advance Deposit		03/16/17	60029574821	\$88.00
03/17/17	Served Res. Agent c/o	\$75.00			
	65 Pages @ \$.20/Page	\$13.00			
Sub-Totals:		\$88.00	Total Paid:		\$88.00

Terms: Payment is due in full upon receipt; and is not contingent upon client or insurance reimbursement. A past due fee of 15% will be assessed on all outstanding invoices of 30 days or more from the invoice date.

**Total Amount Due = \$0.00**

**Invoice Due Date: 4/16/2017**

Please detach and return this section with your payment. Make checks payable to Legal Process Service

Garson, Segal, Steinmetz, Fladgate LLP

Kevin Kehrli

164 West 25th St., #11R

New York, NY 10001

Remit Payment to:

Legal Process Service

724 South 8th Street

Las Vegas, NV 89101

**We Appreciate Your Business! Thank You!**  
**Please Pay By Due Date To Avoid Past Due Charges.**

Work Order # 1701708

Invoice Date: 03/17/2017

Invoice Due Date: 4/16/2017

Client ID# M6724

**Total Amount Due = \$0.00**



